

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**December 2, 2005**

**Clerk of Court**

DAVID JOHNSON,

Plaintiff-Appellant,

v.

ABC TAXI, INC.,

Defendant-Appellee.

No. 04-3443  
(D.C. No. 03-CV-1019-JTM)  
(D. Kan.)

**ORDER AND JUDGMENT \***

Before **TYMKOVICH** , **PORFILIO** , and **BALDOCK** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff-appellant David Johnson formerly leased and drove a taxi under a contract with defendant-appellee, ABC Taxi, Incorporated. Appellant, appearing

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

pro se, appeals from the district court's order granting summary judgment to appellee in this civil rights suit alleging sexual harassment and retaliatory discrimination. See Aplt. Br. at 6.

First, we deny appellee's motion to dismiss the appeal for lack of jurisdiction on the basis of untimeliness. On September 28, 2004, within ten days after the September 21, 2004 entry of the order granting summary judgment, appellant filed a motion for reconsideration, which was construed as a motion under Fed. R. Civ. P. 59(e), and which tolled the time to appeal. See R., Doc. 111; id., Doc. 114, at 2; Fed. R. App. P. 4(a)(4)(A). The November 12, 2004 notice of appeal was timely filed within thirty days after the district court denied the motion for reconsideration on October 22, 2004. See R., Doc. 114; Fed. R. App. P. 4(a)(1)(A), (a)(4)(A). We therefore proceed to the merits.

We review the district court's grant of summary judgment de novo, applying the same legal standard used by the district court. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. When applying this standard, we view the evidence and draw reasonable inferences therefrom in the light most favorable to the nonmoving party.

Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1225 (10th Cir. 2000) (quotations and citations omitted).

We have carefully reviewed the record, the parties' briefs, the district court's Memorandum and Order entered on September 21, 2004, and the applicable law. Appellant's appeal is without merit, and we affirm for the reasons set forth in the district court's Memorandum and Order. See R., Doc. 109.

Appellee's motion to dismiss for lack of jurisdiction is denied. The judgment of the district court is AFFIRMED.

Entered for the Court

Timothy M. Tymkovich  
Circuit Judge